

# **MISSOURI COURT OF APPEALS WESTERN DISTRICT**

**CHERYL GOAD, Deceased, WESLEY GOAD, Widower,**

**Appellant,**

**v.**

**TREASURER OF THE STATE OF MISSOURI -- CUSTODIAN OF THE SECOND  
INJURY FUND,**

**Respondent.**

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**DOCKET NUMBER WD72820**

**Date: November 22, 2011**

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Appeal from:  
Labor and Industrial Relations Commission

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Appellate Judges:  
Division One: Gary D. Witt, Presiding Judge, James E. Welsh and Alok Ahuja, Judges

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Attorneys:  
Keith V. Yarwood, Kansas City, MO, for appellant.  
Benita M. Seliga, Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

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**Appellant,**

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**TREASURER OF THE STATE OF MISSOURI -- CUSTODIAN OF THE SECOND INJURY FUND,**

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Labor and Industrial Relations Commission

Appellant Wesley Goad's wife, Cheryl Goad, was injured on August 13, 2007, while lifting a mail tub at work, which led to a herniated disk in her back. Cheryl Goad never returned to work after her injury, and instead filed a claim for permanent partial disability benefits with the Division of Workers Compensation on October 26, 2007. Mrs. Goad amended her claim on July 17, 2008, to allege that she was permanently and totally disabled. Mrs. Goad died of causes unrelated to her work injury on April 15, 2009. Goad was substituted as the claimant.

An ALJ awarded Goad permanent and total disability benefits, but only through the date of his wife's death. The ALJ denied Goad's claim for the continued payment of benefits following his wife's death under the Missouri Supreme Court's decision in *Schoemehl v. Treasurer of the State of Missouri*, 217 S.W.3d 900 (Mo. banc 2007). The ALJ reasoned that Cheryl Goad had alleged a claim only for permanent *partial* disability benefits, not permanent *total* disability benefits, at the time the General Assembly enacted statutory amendments ("H.B. 1883") abrogating *Schoemehl* effective June 26, 2008. The ALJ therefore concluded that the 2008 statutory amendments applied to, and foreclosed, Goad's *Schoemehl*-based claim.

The Labor and Industrial Relations Commission affirmed the ALJ's decision by a two-to-one vote, but for different reasons. The Commission majority reasoned that Goad's rights under *Schoemehl* did not "vest" until his wife passed away, which was after the legislative action abrogating the decision. The new statute therefore applied to Goad's claim.

**REVERSED AND REMANDED.**

Division One holds:

In *Bennett v. Treasurer*, 271 S.W.3d 49, 53 (Mo. App. W.D. 2008), we held that "recovery under *Schoemehl* is limited to claims for permanent total disability benefits that were pending between January 9, 2007, the date the Missouri Supreme Court issued its decision in

*Schoemehl*, and June 26, 2008, the effective date of HB 1883.” Goad’s claim satisfies this description of the “*Schoemehl* window,” because the underlying claim was pending during the relevant period.

The Commission’s refusal to apply *Schoemehl* to Goad’s claim, based on its “vested rights” analysis, is contrary to the decisions which have addressed *Schoemehl*’s applicability in light of the later legislative abrogation of that decision. Those cases hold that “[t]he amended statute is not retroactive and will only apply to claims initiated after the effective date of the amendment.” *Tilley v. USF Holland Inc.*, 325 S.W.3d 487, 494 (Mo. App. E.D. 2010). Further, *Bennett* holds that *Schoemehl* is applicable to claims that were pending during the “*Schoemehl* window.” *Bennett* makes no reference to an additional condition – that the worker have died prior to the effective date of H.B. 1883.

The “vested rights” analysis is inconsistent with caselaw concerning the retrospective application of Missouri statutes. As a general matter, “statutory provisions that are substantive are generally presumed to operate prospectively unless the legislative intent that they be given retroactive operation clearly appears from the express language of the act or by necessary or unavoidable implication.” *Cook v. Newman*, 142 S.W.3d 880, 893 (Mo. App. W.D. 2004). The General Assembly’s abrogation of *Schoemehl* effected a substantive change in the law. First, the effect of H.B. 1883 is to completely foreclose *any* right to compensation which surviving dependents formerly possessed. Second, under *Schoemehl*, surviving dependents step into the shoes of, and have the same rights as, the deceased worker. Substantive post-injury amendments to the Workers’ Compensation Law could not be applied to Cheryl Goad; they are accordingly inapplicable to Mr. Goad, the surviving dependent who has stepped into her shoes. Third, H.B. 1883 has the effect of significantly reducing the compensation payable for permanent total disability claims. Generally, statutes which modify the measure of damages for a pre-enactment injury are substantive.

Because H.B. 1883 affected substantive rights, we presume that the legislature did not intend it to apply retrospectively to pre-enactment injuries. No contrary legislative intent appears from the language of the act or by necessary implication. Goad’s claim was therefore not subject to H.B. 1883, and the Commission erred in concluding otherwise.

The Second Injury Fund also argues that Goad fails to come within the “*Schoemehl* window” because Cheryl Goad only asserted a claim for permanent *partial* disability during the relevant time period, not a claim for permanent *total* disability. However, Mrs. Goad’s amended claim, filed after the effective date of H.B. 1883, merely perfected and amplified her original claim, but alleges the exact same underlying injury. The amended claim therefore relates back to the date of filing of the original claim, and the Second Injury’s Fund’s alternative pleading argument provides no basis for refusing to apply *Schoemehl* here.

Before: Division One: Gary D. Witt, Presiding Judge, James E. Welsh and Alok Ahuja, Judges

Opinion by: Alok Ahuja, Judge

**November 22, 2011**

**THIS SUMMARY IS UNOFFICIAL AND  
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